

LAKE COUNTY BOARD of ADJUSTMENT
September 12, 2012
Lake County Courthouse Large Conference Room (Rm 317)
Meeting Minutes

MEMBERS PRESENT: Clarence Brazil, Sue Lavery, Mike Marchetti, Tim McGinnis

STAFF PRESENT: Joel Nelson, LaDana Hintz, Robert Costa, Lita Fonda

Mike Marchetti called the meeting to order at 4:00 pm

Two corrections to the minutes were offered on pg. 2. Robert noted in the 3rd line from the top that 'conditions' needed to replace 'conditional'. Sue observed in the paragraph prior to the bottom one, in the 5th line from the bottom, the phrase should read 'they had to put it 50 feet back' rather than 'they had to put in 50 feet back'.

Motion made by Sue Lavery, and seconded by Clarence Brazil, to approve the August 15, 2012 meeting minutes with the two changes as noted. Vote unanimous to approve minutes.

OBER CONDITIONAL USE

Robert Costa presented the staff report. (See attachments to minutes in the Sept. 2012 meeting file for staff report.)

Clarence checked if the house was actually built in the 1880's. Robert said this was when a single-family residence was constructed according to the tax records. The applicants could speak to that in more depth. He wasn't sure if the date was accurate; the property was rather historic.

Mayme Ober spoke on behalf of her application. The barn was historical. They wanted to retain the original flavor when they worked with the house. John Lanegan, contractor for the project, added that they wanted the garage to reflect the appearance of the cabin. They thought this was the best place for the garage, since it was almost invisible from every angle. They didn't want to take away from the [inaudible]. A lot of people on the highway stopped to take pictures of the barn, which was also featured in barn books across the state. Mayme clarified there was both a barn and a house, at Sue's request. The barn was closer to Hwy 93. The house was down the slope, closer to [Rollins] Lakeshore Drive.

Public comment opened: No comments were offered. *Public comment closed.*

Motion made by Tim McGinnis, and seconded by Clarence Brazil, to grant the conditional use with findings of fact and staff conditions. Motion carried, all in favor.

D & H HOLDINGS CONDITIONAL USE—FINLEY POINT: (4:08)

Robert Costa presented the staff report. (See attachments to minutes in the Sept. 2012 meeting file for staff report.)

Mike checked when the variance for a connection to water/wastewater would be needed. Robert replied this was needed prior to issuance of zoning conformance, if the applicant decided to connect it. Currently, there was a condition to make clear to staff what was currently on the property and how it conformed. Clarence asked what prevented the addition of a connection in the future. Robert said a signed statement from [the owner] that there would not be a connection would likely be required. Clarence asked how that would be enforced. Robert said there would be a final inspection pertaining to the zoning conformance, in addition to the statement. Tim checked that if he decided not to hook up water and sewer, he could build the building without conditions 3 through 6. Robert corrected that the Board was examining the slope disturbance. As part of the request, staff recommended these conditions with the approval for the slope disturbance. Conditions #3 through 6 would still be required. None addressed whether or not he would connect to water/ wastewater. These addressed the structure itself, what was on the property and whether or not he conformed to the zoning regulations.

Sue observed this request seemed like the cart before the horse, with open ends untied. Clarence commented he'd seen in the past where after building, people went back a few years later, installed sewer and water, never told anybody and got away with it.

Tim asked if he could disturb the slopes and create the pad without these conditions. Joel replied he couldn't do that without the conditional use permit. Robert said if the applicant decided against pursuing the structure, he wouldn't need a zoning conformance permit. The pad would also need a zoning conformance. Mike said any disturbance of slope would require a permit. Joel said any disturbance of slopes would require this current review. Mike checked the intent of the building was a garage/ storage building, with no living quarters. Robert said this was so, based on the applicant's statements.

Chuck Lars~~oen~~^{son}, the father of Dan Larson, spoke on behalf of the application. Dan needed a garage to make things safer, given past theft. He described the main cabin, which was one room, with one sink with both cold and hot water. The water heater was in another location. The cabin had no insulation, no heat, was intended for eating and gathering and was unusable in the winter. The bath cabin was a 4-foot by 5-foot shed with a sink, a toilet and a shower. It provided water to the main cabin, and was also unusable in the winter. There were 2 sleeping cabins built in the 1960's, which were 15 feet by 10 feet, with the sole purpose of sleeping. These also were uninsulated and unheated. The sheds all had 2 x 4 walls only.

Chuck explained that Dan wanted to build the garage for safety, as he had quite a few things stolen up there. As long as he was building the garage, he wanted to put in the future water and sewer. He also might eventually have a dryer. He described two septic tanks and a water heater. As long as Dan was putting in a foundation and a floor [for the garage], he wanted to put in sewer and water plumbing, so he could use it later, instead of doing it after the fact.

Chuck said the sleeping cabins didn't have sinks, when Sue inquired. They were 2 x 4 construction, with no insulation. Robert asked where the kitchen was. Chuck replied it was in the main cabin. The water for the main cabin, which had just a sink with cold and hot water, came from the bath cabin. Chuck referred to the septic system up above. If you had to hook up sewer, the one on the bath cabin would not be feasible for a septic system for a cabin. The one up above was way up at the top of the lot, where the RV had been. You'd have to do major things to use that. He said there weren't habitable living quarters there.

Public comment opened: None offered. *Public comment closed.*

Sue thought there were too many open, loose ends. It would have been nice to have a more complete package, especially if they were thinking about adding some type of additional water system in the near future. Mike said he was leaning in the same direction. He thought they had intent that the facility would have water and connection to a septic system.

Mike suggested they could put in another condition that the variance request be processed before construction and disturbance were allowed to begin. Otherwise they would be in a position where they wouldn't be able to control this. He was very concerned about a lack of ability to control something that could have an impact on the environment. He asked for suggestions on how such a condition might be written. Robert said if they wanted to approve language tonight, they could give ideas and work on it. If they preferred, they could give him the general idea, and he would work on it.

Mike said his intent was to add language in, saying that prior to the beginning of the slope disturbance or the construction phase of this, that the variance for connections to water and to wastewater would be approved by the Board. It seemed evident that it was going to happen. If they started construction without having this approved, and they tried to attach water, they wouldn't have given this the proper environmental look, or it might not be the right size septic system for a structure of this size or other kind of stuff needed. He thought it would be an injustice to the owner to levy something on them without them knowing.

Joel asked if he wanted to expand on condition #6.

Tim thought a concern seemed to be whether or not it was an accessory unit. The issue could be to determine which is the accessory unit on this property. Mike thought that was a good point. Tim said it seemed to be covered, although #6 could be expanded. It didn't give a zoning conformance permit until they get these items done.

Sue summarized they had 2 buildings and an RV hooked up to water and sewer. Robert reiterated they weren't sure what was on the property. Mike asked if there were holding tanks for the septic currently on the property. Chuck said there were septic tanks with drainfields. He wasn't sure about the one down below.

Robert asked if he was talking about making spaces or cuts in the foundation for water and wastewater. Chuck said no. He said Dan really wanted a garage for the protection of his property. As long as he was constructing, he would like to put in the rough in for the plumbing, at least the sewer, so he didn't have to bust through the concrete. Robert explained that in phone conversations, he made it clear that if Dan wanted to make cut-ins, or space in the concrete so he could do this later, a requirement would be that he get a variance and address compliance in one way, shape or form. He understood that Dan didn't know at present if he actually wanted to connect the structure. Chuck asked what would happen if Dan didn't do that. Robert replied if Dan abandoned that, and the structure complied with the zoning regulations, he could have a zoning conformance permit for the structure.

Clarence said the applicant needed to make up his mind. Sue agreed. Mike thought that on item #6, they would need to add language that the purpose of the new structure needed to be clearly identified, and whether or not it would have water. They were already addressing the purpose of the other structures. If they were going to have water and wastewater connection in the new structure, they had to have a variance to proceed. Sue referred to the earlier discussion about signing a document [that there would be no connection]. What happened if he put one in, in 5 years? Mike said he couldn't control what happened in 5 years. He could only control what was happening right now with what was in front of him. Joel said there would be conditions on the permit that he couldn't connect to water or sewer. Robert added if he did, a violation would be issued when it was discovered. Other than doing the best they could to safeguard it, and signed statements, that was the best they could do.

Tim observed that he'd like to see them connect to water and sewer, with the hope that in the near future, the [structure] they know nothing about that's close to the lake would have to go away. Clarence said the applicant needed to make up his mind ahead of time on which direction to go. Sue agreed. Mike said they could [inaudible] on this and approve it as long as they were confident that they weren't going to have water. As soon as it's in writing that the intent was to have water and wastewater connections, this should stop until the variance was completed. Joel said to keep in mind that there might be other ways to address zoning compliance besides the variance. For instance, he could take out the other structures and this would be the only dwelling unit. It sounded like there was a concern that if the applicant moved forward with slope disturbance, that somehow if it was a house, the slope disturbance would somehow be worse.

Sue explained her concerns with the vagueness and open-ended sound of so many things. No one knew what the buildings were or if it really complied with the zoning district currently, and it was a concern to open it up for another conditional use or another use where they didn't really know what it was going to be about. The Board was being asked to approve slope disturbances, but to what ends?

Mike thought it would be clear-cut except for the water, both from Robert and the statement from Dan's father. If they wanted to do this without water, he could approve

that, and they would have to come back through Planning if they wanted to put water in, to figure out how to do it.

Robert said the Board was voting on the slope disturbance right now. There were additional conditions to make sure the structure to be placed would comply with the regulations. Mike pointed to condition #6, of the identification and purpose of the structure. Tim thought it was covered.

Sue asked if Mike would expound on #6. Mike thought #6 covered it. It talked about the proposed structure. He thought Robert's analysis clearly identified what the purpose of the proposed structure needed to be for this to proceed properly. He was feeling okay with this.

Motion made by Tim McGinnis, and seconded by Mike Marchetti, to approve the conditional use request with findings of facts, conditions, terms and staff recommendations, with condition #6 bolded. Motion carried, 3 in favor (Sue Laverty, Mike Marchetti, Tim McGinnis) and one abstention (Clarence Brazil).

EXECUTIVE SESSION (4:42)

Motion made by Tim McGinnis, and seconded by Sue Laverty, to go into executive session. Motion carried, all in favor.

WEISS VARIANCE RE-REVIEW—CITY COUNTY (approx. 5:15)

LaDana Hintz presented information. This proposal was reviewed during the June 13, 2012 meeting of the Board. The Board made a decision at that time. There were 2 variance requests on the table. One was for the placement of a structure with a [inaudible] side yard that was not larger than required. The second was a reduction from the required minimum 30-foot setback from side property lines. At the conclusion of the public hearing, the Board voted 3-0 to deny both requests and variances subject to the findings that were outlined in the staff report. Since that public hearing, Max submitted additional information and requested that his two variance requests be reconsidered, based on the new information in addition to the information that he previously submitted for the 6/20/12 review.

After review of the new information and previously submitted information, the Planning Dept staff had not changed their recommendations or findings with regards to the requested variances. Therefore staff had not submitted an additional staff report for Board consideration tonight. Some attachments for the Board to consider were included, including the previous staff report and exhibits, the approved meeting minutes, a letter submitted by the applicant dated Aug. 13, 2012 and correspondence with attorneys' offices, including O'Neill, Manley and Fischer law offices.

It was back before the Board for re-consideration today. If the Board wished to approve the variance request, the Board would need to draft findings in support of the decision. If the Board did elect to approve the variances, it should grant the minimum relief necessary to alleviate the applicant's hardship and include such findings in the final decision. In the

June staff report, the staff did include some suggested conditions, which were on pg. 24-26.

Motion made by Mike Marchetti to go directly to a vote without public comment at this point in time. Max Weiss said a point of order was to ask if this was the appropriate procedure. Mike said there was a reason why they were doing this. He asked for a second to the motion. **Motion seconded by Sue Lavery, Motion carried, all in favor.**

Motion made by Mike Marchetti, and seconded by Sue Lavery, to rescind the Board decision of June 13 of the Weiss variances. Motion carried, all in favor.

Motion made by Mike Marchetti, and seconded by Tim McGinnis, that the variance requests be set aside, as it was inappropriate for this Board to make a decision on this. Motion carried, all in favor.

OTHER BUSINESS

Mike opened the floor to other business and invited public comment.

Max Weiss commented on the minutes of the June minutes, referring to a section that said if a building was dry, you couldn't have sprinklers. He asked if that was based on the Polson Development Code or sanitation language. LaDana thought this was based on her discussion with the Environmental Health Dept. that the structure would be dry. When the Environmental Health Dept. reviewed the application, they reviewed it as a dry structure without water or sewer connected to it. Max said that installation of fire suppression sprinklers was prohibited in this structure. LaDana said installation of water was what they were talking about. You couldn't have sprinklers without water. She thought it was something that he needed to clarify with them. If he wanted water to this structure, he would need to get approval from them for the water. They signed off as part of the process it went through. Planning didn't permit things that Environmental Health would not.

Max said the basis of the dismissal was the question was moot. Tim said no, [inaudible]. Max asked if it was because of the existence of the court order. He said they had to have findings of facts. Mike said they dismissed it, so they didn't have to say findings of facts, but yes, that was part of their decision.

Mike Marchetti adjourned the meeting at 5:25 pm.